

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Utility Application of:  
Reinhard Keller

Application No.: 10/575,544

Confirmation No.: 5662

Filed: May 18, 2006

Art Unit: 2121

For: CONTROL FOR A MACHINE FOR THE  
MANUFACTURE OF PAPER PADDING

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Examiner: Tejal Gami

**APPEAL BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Responsive to the second final Office Action mailed November 9, 2010, Applicant again appeals the final rejection of the claims in this case. Attached hereto is Applicant's notice of appeal dated February 9, 2011. Applicant further avers as follows.

**I. REAL PARTY IN INTEREST**

The real party in interest in this case is Pack-Tiger GmbH, a corporation of Switzerland and having a place of business at Rebhalde 10, CH-8421 Dättlikon, Switzerland.

**II. RELATED APPEALS AND INTERFERENCES**

None.

### III. STATUS OF CLAIMS

Claims 1-16 are pending in this application. No claims have been withdrawn or canceled.

Claims 1-16 have been rejected.

Applicant appeals the Patent Examiner's final rejection of claims 1-16 in this application.

### IV. STATUS OF AMENDMENTS

All amendments that have been filed have been entered in this case.

### V. SUMMARY OF CLAIMED SUBJECT MATTER

There are two independent claims in this application, namely claims 1 and 10. Each of these claims is discussed separately below.

#### Claim 1

1. A control (10, 40) for a machine for the manufacture of paper padding, wherein the machine comprises a drive motor having a cutting device and a shaping device to form a piece of padding from a paper web and to cut it off in a desired length, comprising

an input means (18) to input a desired length of padding;

a control unit (10, 40) having a memory to control the drive motor in response to the input means (18),

See page 2, first full paragraph, and FIG. 1.

A push button 18 forms the input means; see page 12, line 24 – page 13, line 2. In practice, the padding machine continues to produce padding while the input means or push button 18 is pressed. Upon release of the push button 18, a cutting operation is initiated.

The input means of push button 18 provides a signal to a control 10 (FIG. 1) or control 40 (FIG. 2). The control unit 10, 40 controls the operation of the motor for the padding machine in response to the input means or push button 18; see page 13, lines 19-29.

wherein an activation of the input means (18) starts the drive motor and a deactivation of the input means triggers a cutting procedure and stops the drive motor so that the time period of the activation of the input means corresponds to the length of padding produced, and

wherein the control unit (10, 40) automatically stores said length of padding produced in the memory on deactivation of the input means (18) and makes it available for a further call up upon momentary activation of said input means such that the length of padding just produced is automatically reproduced on request.

Activation of the input means 18 or push button 18 starts the motor for the padding machine and continues until the button 18 is deactivated or released. Consequently, the length of the padding material produced is directly proportional, i.e. corresponds, to the time duration that the button 18 is depressed; see page 12, line 24 – page 13, line 2.

The control unit automatically stores the length of the padding just produced in memory. This length of padding is available for further call up upon the momentary activation of the input means 18 so that the length of padding just produced can be easily and repeatedly reproduced; see page 13, lines 4-11.

#### Claim 14

14. A machine for the manufacture of paper padding, comprising:

See page 2, lines 7-10.

a drive motor having a cutting device and a shaping device to shape a piece of padding from a paper web and to cut it off in a desired length; and

Page 12, line 19 – page 13, line 2.

a control comprising:

an input means (18) to input a desired length of padding;

A push button 18 forms the input means; see page 12, line 24 – page 13, line 2. In practice, the padding machine continues to produce padding while the input means or push button 18 is pressed. Upon release of the push button 18, a cutting operation is initiated.

a control unit (10, 40) having a memory to control the drive motor in response to the input means (18),

The input means of push button 18 provides a signal to a control 10 (FIG. 1) or control 40 (FIG. 2). The control unit 10, 40 controls the operation of the motor for the padding machine in response to the input means or push button 18; see page 13, lines 19-29.

wherein an activation of the input means (18) starts the drive motor and a deactivation of the input means triggers a cutting

Activation of the input means 18 or push button 18 starts the motor for the padding machine and continues until the button 18 is

procedure and stops the drive motor so that the time period of the activation of the input means corresponds to the length of padding produced, and

wherein the control unit (10, 40) automatically stores the length of padding produced in the memory on deactivation of the input means (18) and makes it available for a further call up upon momentary activation of said input means such that the length of padding just produced is automatically reproduced upon request.

deactivated or released. Consequently, the length of the padding material produced is directly proportional, i.e. corresponds, to the time duration that the button 18 is depressed; see page 12, line 24 – page 13, line 2.

The control unit automatically stores the length of the padding just produced in memory. This length of padding is available for further call up upon the momentary activation of the input means 18 so that the length of padding just produced can be easily and repeatedly reproduced; see page 13, lines 4-11.

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Patent Examiner has rejected all of the claims in this case, namely claims 1-16, as anticipated under 35 U.S.C. §102 by U.S. Patent Application Publication No. 2003/0114288 to Harding.

Applicant appeals the rejection of all claims, namely claims 1-16.

## VII. ARGUMENT

For the reasons set forth below, Applicant respectfully submits that the Patent Examiner's rejection of claims 1-16 as anticipated by the Harding patent publication is in error and should be reversed by this Board. Since there is only one rejection of the claims in this case, namely a rejection under 35 U.S.C. §102 in view of the Harding reference, only that basis for rejection will be discussed.

As discussed briefly in the summary of the invention, the present invention relates to a control and machine for the manufacture of paper padding. The machine includes a drive motor,

a cutting device, and a shaping device to form padding from a paper web and to cut the paper padding off at the desired length.

The control includes an input means, such as a button 18, to input the desired length of the paper padding. Activation of the input means, e.g. by depressing and holding the button 18, initiates the drive motor and shaper to form the paper padding. Upon subsequent release or deactivation of the button 18, the control unit stops the drive motor and thus stops the production of paper padding and initiates a cutting procedure. Consequently, the length of time that the input means or push button 18 is suppressed is directly proportional to the length of paper padding produced. Thus, any variable length of paper padding may be produced by the machine and control unit of the present invention since the length of paper padding can be varied by simply varying the time of depression of the input means 18. Furthermore, this aspect of Applicant's invention is clearly defined in the penultimate paragraph of both claims 1 and 14, i.e. the two independent claims in this case.

Claim 3 also provides that the input means "is", not "comprises", a push button or a switch thus further limiting the definition of "input means".

At the time that the input means is deactivated and the cutting operation initiated, the control unit stores the length of padding just produced in memory. That length is then available for immediate call up upon a momentary activation of the input means. This aspect of Applicant's invention, furthermore, is clearly defined in the final paragraph of claims 1 and 14.

Consequently, if multiple lengths of padding of, for example, 11.7 inches were desired, the input means would be held down for a length of time required to produce 11.7 inches of paper padding. Thereafter, any number of lengths of paper padding of 11.7 inches may be manufactured by simply momentarily activating or depressing the input means 18.

Consequently, in Applicant's invention, an arbitrary length of paper padding is first created by the user and, thereafter, paper padding of the same length may be easily replicated by a momentary activation of the input means.

The Patent Examiner, however, has rejected all of the claims in this case as anticipated by the Harding patent publication. It is, of course, rudimentary that in order for a prior art publication to anticipate the claims, the prior art publication must show each and every element of the claimed invention. As discussed below, Harding fails to meet that standard.

More specifically, the Harding reference admittedly discloses a machine which produces paper padding. Applicant freely acknowledges that such paper padding machines are old.

The Harding controller also discloses a plurality of buttons wherein each button corresponds to a different length of padding. In Applicant's invention, however, variable lengths of padding can be produced simply by varying the duration of depression of the input means 18.

In paragraph [0049] the Harding reference does, however, indicate that the duration of activation of the machine could be varied by a foot switch. Furthermore, paragraph [0049] indicates that the cutting assembly may be actuated upon release of the foot switch. Consequently, it does appear that a variable length of padding can be constructed with the Harding device.

However, claims 1 and 14 in the instant application are much more limited than merely a padding machine capable of preparing paper padding of different variable lengths. Rather, in Applicant's invention, upon release of the input means, the length of the padding just produced is stored in memory. Furthermore, this length may be immediately recalled by a momentary activation of the input means. Consequently, in order to constitute an anticipatory reference under 35 U.S.C. §102, it would be necessary for Harding to teach that, following the production

of a variable length of paper padding by holding the foot switch closed for a user selected time as taught in paragraph [0049] of Harding, a subsequent momentary activation of the Harding foot switch would automatically replicate the just produced length of paper padding. Even though such a teaching in Harding would be required for it to anticipate claims 1 and 14 in this application, there simply is no such teaching in the Harding publication.

The Patent Examiner, however, specifically references paragraphs [0046], [0077] and [0081] in the second final Office Action. Applicant, however, respectfully submits that the Patent Examiner has read too much into this portion of the Harding reference.

More specifically, these paragraphs clearly teach that the microprocessor may store information that it receives in nonvolatile memory. However, there is absolutely no suggestion or teaching in the Harding reference that the length of the paper padding last produced is stored in memory and there is clearly no teaching in this portion, or any portion for that matter, of the Harding patent specification that the length of paper padding last produced may be immediately recalled by a momentary activation of the foot switch (see paragraph [0040]).

The Patent Examiner also references paragraph [0077]. Paragraph [0077] merely states that the microprocessor 48 may keep a running total of paper used by the machine indirectly by measuring the time that the feed motor has run. In other words, paragraph [0077] merely teaches that the total time of running of the feed motor is accumulated by the microprocessor and stored in memory and then subsequently converted to the length of paper padding produced. The reason for this accumulation of time or length of paper padding produced is for accounting purposes.

There is absolutely no teaching in paragraph [0077] of the Harding reference that the length of the last paper padding produced may be immediately recalled and replicated by a

momentary depression of the foot switch. The Harding foot switch, of course, is the only thing in the Harding reference that corresponds to the input means in the instant application.

In paragraph 4 of the second final rejection the Examiner argues that the limitation “input means” must be construed as broad as possible and thus must include not only the push button but the entire padding and cutting procedure. To this argument, there are two responses.

First, while claims must be broadly construed, they must be interpreted in light of the patent specification and not in a vacuum. In this case the Examiner’s interpretation is in complete disregard of the patent specification.

More specifically, the thrust of this entire case is that variable length padding may be manufactured by activating the input means for a variable time period and that that variable length may be instantly recalled to duplicate the length. This is simply not possible in Harding. In Harding if you push the button, you get 12 inches of padding regardless of how long the button is pushed. If you want to repeatedly produce 13 inch padding you are simply out of luck.

Secondly, the Examiner’s overly broad interpretation of “input means” completely ignores the language of claim 3. Claim 3 recites in part that “the input means is an individual switch or push button”. Claim 3 uses the word “is”, not “comprises”, and therefore cannot include the extra vague circuitry that the Examiner includes in the definition of “input means”. In short, claim 3 says in part that activation of the “switch or push button” starts the drive motor and deactivation triggers a cutting operation so that “the time period of the activation of the input means”, i.e. the switch or push button of claim 3, “corresponds to the length of the padding produced”. Harding simply does not teach or disclose this structure so that rejection of at least claim 3 is improper.



Since the Harding reference fails to teach each and every element of claims 1 and 14, i.e. the only two independent claims, nor claim 3, Applicant respectfully submits that the Patent Examiner's rejection of claims 1-16 as anticipated by the Harding reference is in error and should be reversed.

#### VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A include all the amendments filed by Appellant.

#### IX. EVIDENCE

The evidence involved in the present appeal is listed in attached Appendix B.

#### X. RELATED PROCEEDINGS

The related proceedings involved in the present appeal are listed in attached Appendix C.

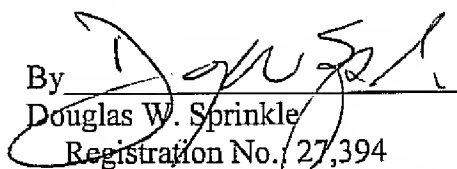
The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 07-1180.

Dated:

4-5-11

Respectfully submitted,

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## **APPENDIX A**

1. A control (10, 40) for a machine for the manufacture of paper padding, wherein the machine comprises a drive motor having a cutting device and a shaping device to form a piece of padding from a paper web and to cut it off in a desired length, comprising

an input means (18) to input a desired length of padding;

a control unit (10, 40) having a memory to control the drive motor in response to the input means (18),

wherein an activation of the input means (18) starts the drive motor and a deactivation of the input means triggers a cutting procedure and stops the drive motor so that the time period of the activation of the input means corresponds to the length of padding produced, and

wherein the control unit (10, 40) automatically stores said length of padding produced in the memory on deactivation of the input means (18) and makes it available for a further call up upon momentary activation of said input means such that the length of padding just produced is automatically reproduced on request.

2. A control in accordance with claim 1, wherein the stored length of padding can be called up by an actuation, in particular a brief actuation, of the input means (18) or of a further input means from the memory, with the manufacture of at least one further piece of padding being triggered automatically in the called up length on the call up of the length of padding.

3. A control in accordance with claim 1, wherein the input means is an individual switch or push button (18); and wherein an input pad (45) is provided in addition to the switch or

push button (18) with which desired lengths of padding can be input into the control and/or can be called up out of the control, with the manufacture of at least one piece of padding being triggered automatically in the called up length on the call up of a length of padding.

4. A control in accordance with claim 3, wherein it permits a directly sequential call up of a respective length of padding with the switch or the push button (18), on the one hand, and with the input pad (45), on the other hand, without a further input means of the control having to be actuated between these two call ups.

5. A control in accordance with claim 3, wherein at least one additional switch or push button (22 - 26; 91 - 93; 46 - 50) is provided on whose actuation a standard length of padding stored in the memory is called up, with the manufacture of at least one piece of padding being triggered automatically in the called up length on the call up of the length of padding.

6. A control in accordance with claim 1, wherein a display device (90) is provided; and wherein, when the control is switched on for the first time, a standard length of padding stored in the memory is displayed which can be called up by a further input means (95, 46), with the manufacture of at least one piece of padding being triggered automatically in the called up length on the call up of the length of padding.

7. A control in accordance with claim 1, wherein it has a mode in which a combination of the desired number and of the desired length of the pieces of padding to be produced can be at least one of stored and called up.

8. A control in accordance with claim 1, wherein an input means (22 - 26; 30; 45) is provided with which a continuous manufacture of pieces of padding in the stored length of padding can be activated.

9. A control in accordance with claim 3, wherein the individual switch or push button (18), the input pad (48) and an input means for the activation of a continuous manufacture (30) are input means of equal priority for the call up of a length of padding, with the manufacture of at least one piece of padding being triggered automatically in the desired length on the call up of the length of padding.

10. A control in accordance with claim 1, wherein a selection switch (20) is provided with which a plurality of memory locations can be selected in the memory in which a produced length of padding can be stored automatically, with the associated stored length of padding being produced in dependence on the position of the selection switch (20), in particular on the activation of the input means (18).

11. A control in accordance with claim 10, wherein a further input means (22 - 26) is respectively associated with the plurality of memory locations to call up a length of padding stored at the respective memory location, with the manufacture of at least one piece of padding being automatically triggered in the called up length on the call up of the length of padding.

12. A control in accordance with claim 1, wherein a sensor is connected to it which detects the forthcoming end of the paper web; and wherein the control generates a signal in response to the sensor which in particular interrupts a further operation of the machine at least temporarily.

13. A control in accordance with claim 1, wherein it has a connector for an electromagnetic coupling of an auxiliary unit, with the control controlling the drive motor differently in dependence on whether the electromagnetic coupling is connected, with the control preferably automatically recognizing whether an electromagnetic coupling is connected.

14. A machine for the manufacture of paper padding, comprising:

a drive motor having a cutting device and a shaping device to shape a piece of padding from a paper web and to cut it off in a desired length; and

a control comprising:

an input means (18) to input a desired length of padding;

a control unit (10, 40) having a memory to control the drive motor in response to the input means (18),

wherein an activation of the input means (18) starts the drive motor and a deactivation of the input means triggers a cutting procedure and stops the drive motor so that the time period of the activation of the input means corresponds to the length of padding produced, and

wherein the control unit (10, 40) automatically stores the length of padding produced in the memory on deactivation of the input means (18) and makes it available for a further call up

upon momentary activation of said input means such that the length of padding just produced is automatically reproduced upon request.

15. A machine in accordance with claim 14, wherein the control is made as a separate operating part which is connected to the machine via a cable, wherein a holder is in particular provided at the machine for the releasable installation of the control.

16. A machine in accordance with claim 14, wherein a bus system is provided for the transmission of the control signals from the control to the machine.

**APPENDIX B**

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

### **APPENDIX C**

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.